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Human Rights : A critical analysis on Gender Issues

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ABSTRACT

In this paper discussed about on issues of gender and human rights in standard-setting and to some extent application of those standards through international and domestic legislation and jurisprudence, and in institutional programming and development. In addition, recent years have seen the human rights of lesbian, gay, bisexual, transgender, and intersex people being taken up beyond the first human rights bodies that addressed them, and developments have taken place in standard-setting. Despite this progress, many challenges remain. Violence against women continues at a staggering rate also would be discussing part of this paper. Gender-based discrimination persists in the workplace, housing, education, disaster relief, health care, and countless other areas. Access to justice continues to be hindered by a range of obstacles. This article highlights also just a few opportunities and challenges to come for international human rights on gender issues.

Key Words : Human rights, Gender issues, Disaster relief, Health care

INTRODUCTION

Human rights, most basically, are rights to which people are entitled by virtue obeying human. They are therefore 'universal' rights, in the sense that they belong to all human beings rather than to members of any particular nation, race, religion, gender, social class or whatever. This universalism was clearly expressed in the words of the American Declaration of Independence, written by Thomas Jefferson (1743–1826), which proclaimed: 'We hold these truths to be self-evident, that all men are created equal; that they are endowed by their Creator with certain unalienable rights'. However, there have been very deep divisions about what rights human beings should enjoy[1]. Indeed, thinking about the content of human rights has developed significantly over time, enabling three different types, or 'generations' of human rights to be identified These are: Civil and political rights Economic, social, cultural rights and Solidarity rights.

Gender a different meaning:

"Liberals have traditionally regarded differences between women and men as being often direly private or personal significance. In public and political life, all people are considered as individuals, gender being as irrelevant as ethnicity or social class. In this sense, individualism is 'gender-blind'.

Conservatives have traditionally emphasized the social and political significance of gender divisions, arguing that they imply that the sexual division of labour between women and men is natural and inevitable. Gender is thus one of the factors that gives society its organic and hierarchical character.

Socialists like liberals, have rarely treated gender as a politically significant category. When gender divisions are significant it is usually because they reflect and are sustained by deeper economic and class inequalities.

Fascists view gender as a fundamental division within humankind. Men naturally monopolize leadership and decision-making, while women are suited to an entirely

1. Heywood, Andrew/ in the Book of/ Global Politics (Gender in global politics) P. 423

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domestic, supportive and subordinate role.

Feminists usually see gender as a cultural or political distinction, in contrast to biological and ineradicable sexual differences. Gender divisions are therefore a manifestation of male power. Difference feminists may, nevertheless, believe that gender differences reflect a psycho-biological gulf between female and male attributes and sensibilities.

Religious fundamentalists usually regard gender as a God-given division, and thus as one that is crucial to social and political organization. Patriarchal structures and the leadership of males therefore tend to be regarded as natural and desirable"[2].

In the United Nations Population Fund reported that the number of women dying as a consequence of pregnancy and childbirth is 'essentially unchanged since the 1980s'. Access to justice continues to be hindered by a range of obstacles, including restrictions in some countries on freedom of movement, discounting of evidence given by women, and lack of training of police, prosecutors, and judges. Religion, tradition, and culture continue to be used as a shield for violating women's rights, despite strong and persistent statements adopted by states in United Nations' fore that they are not a valid justification for such violations. Same-sex conduct is still criminalized in 77 countries, and it carries the death penalty in seven states.

Human security: Gender at risk:

In its broadest sense, human security including Gender refers to the security of individuals rather than of states. As such, it contrasts with 'national security', which is invariably linked to states and military power, the main threats to security deriving from the aggressive behaviour of other states. The notion of human security was an attempt to broaden and deepen the concept of threat, influenced by ideas such as human development and Human security including Gender is often seen as having a variety of dimensions[3]:

– Economic security – an assured basic income;

– Food security – physical and economic access to basic food;

– Health security – protection from disease and unhealthy lifestyles;

– Environmental security – protection from human induced environmental degradation;

– Personal security – protection from all forms of physical violence;

– Community security protection for traditional identities and values;

– Political security – the existence of rights and freedoms to protect women from tyranny of traditional approach or government abuse Critics of human security tend to argue either that it has so deepened and widened the concept of security of deprived gender biased community that it is virtually meaningless (particularly as it extends beyond 'freedom from fear' and includes 'freedom from want'), or that it creates false expectations about the international community's capacity to banish violence and insecurity

Critical Analysis the UN Treaty Bodies and Special Procedures:

Some developments in the international and regional human rights bodies have now gone further than the 'list' approach. An early example is the General Recommendation on 'Gender-related dimensions of racial discrimination'. Adopted in 2000 by the Committee on the Elimination of Racial Discrimination (CERD), it has advanced understanding of the intersectionality of race and gender discrimination by explicitly noting that racial discrimination does not always affect women and men equally or in the same way, giving examples of forms of discrimination that may be directed at women because of their sex, pointing out that women may experience consequences that men do not, such as pregnancy from racially motivated rape, and noting that gender bias in the legal system and in private life may hinder access by women to remedies for racial discrimination.

The multiple discrimination women experience is also recognized by the Committee on Economic, Social and Cultural Rights (CESCR) in its general comment on the equal right of men and women to the enjoyment of all economic, social, and cultural rights. In this general comment, the Committee notes factors that negatively affect the equal right of men and women to the enjoyment of economic, social, and cultural rights, including the right to adequate housing, to adequate food, to education, to the highest attainable standard of health, and to water. The Committee then sets forth a framework for both

2. Heywood, Andrew/ in the Book of/ Political Ideologies an Introduction /Pege no-225.

3. The idea can be traced back to the 1994(UN Human Development Report) and to the doctrine of human rights (see p. 304).

formal equality and substantive equality, stating that gender-neutral laws 'can fail to address or even perpetuate inequality between men and women because they do not take account of existing economic, social and cultural inequalities, particularly those experienced by women'[4].

Gender-based rights violations are addressed in the Committee against Torture's recent general comment notes that 'both men and women and boys and girls may be subject to violations of the Convention on the basis of their actual or perceived non-conformity with socially determined gender roles', and indicates that States Parties should 'identify these situations and the measures taken to punish and prevent them in their reports'. Rape, domestic violence, female genital mutilation, and trafficking – as well as state responsibility to prevent and protect victims from these and other gender-based violence by non-state actors – are explicitly included in this general comment. In an important recognition of the impact of state inaction on the conduct of non-state actors, the Committee declares that 'the State's indifference or inaction' with respect to these acts 'provides a form of encouragement and/or de facto permission' and 'facilitates and enables non-State actors to commit acts impermissible under the Convention with impunity'.

Human rights advocates can use these general comments to guide their work on legislative and administrative reform and governmental policy-making, in efforts to eliminate gender discrimination and non-equality in intergovernmental organizations, in interactions with governments regarding the content of the obligations they undertook in ratifying the relevant treaty, and in drafting shadow reports to the human rights treaty bodies.

Recent treaty body jurisprudence on gender issues:

With the entry into force in December 2000 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, the Committee on the Elimination of Discrimination against Women (CEDAW) has delivered its views on several cases. The Committee's analysis may be used as a guide in evaluating whether a state has exercised due diligence to prevent, investigate, prosecute, and punish violence against women and other human rights abuses. Of the five cases CEDAW has examined on the merits, it found violations in four, three of which involved a failure by the state to provide effective protection against violence against the women concerned. The analysis in these cases shows that states will not escape from their responsibility if they have a legal framework in place but do not provide actual protection for women they know are at risk[5].

In the Human Rights Committee, a law that discriminated against same-sex couples with regard to pension benefits was found to violate Article 26 of the ICCPR as constituting discrimination 'on the basis of his sex or sexual orientation' (*Young v. Australia*, 2003). A law that did not permit same-sex marriage, however, was not determined to violate the Covenant (*Joslin v. New Zealand*, 2002). The applicants alleged that a marriage law permitting marriage only between a man and a woman violated several rights including Article 26, prohibition of discrimination, and Article 23, right to Marry. The Human Rights Committee remarked that Article 23 'is the only substantive provision in the Covenant which defines a right by using the term "men and women", rather than the phrases used elsewhere in the Covenant – "every human being", "everyone" and "all persons"'. The Committee went on to declare that the term 'men and women' 'has been consistently and uniformly understood as indicating that the treaty obligation of States parties stemming from Article 23, paragraph 2, of the Covenant is to recognize as marriage only the union between a man and a woman wishing to marry each other'[6].

Optional Protocol to the Covenant on Economic, Social, and Cultural Rights:

The newly-adopted Optional Protocol to the Covenant on Economic, Social and Cultural Rights, once it enters into force, has the potential to be a useful tool for advocates. Adopted in December 2008, it provides for individual complaints, interim measures to avoid irreparable harm, and an inquiry procedure. Significantly,

4 General comment on the equal right of men and women to the enjoyment of all economic, social, and cultural rights CESCR (General Comment no. 16, 2005).

5 The Committee on the Elimination of Discrimination against Women (CEDAW)/; (Ibid. 533)2000.

6 Catholic News Service. Church Opposes Considering Homosexuality a Crime, Spokesman Says. 2008. Available at *http://www.catholicnews.com/data/stories/cns/0806209.htm* (retrieved 8 January 2009).

communications may be submitted by – or on behalf of – individuals or groups of individuals claiming to be victims of a violation of the economic, social, or cultural rights in the Covenant[7].

States Parties are to take measures to ensure that anyone who communicates with the Committee under the Protocol is not subjected to any form of intimidation or ill treatment. In what is a first for a human rights treaty, the clause requiring States Parties to disseminate information about the treaty widely requires that they do so 'in accessible formats for persons with disabilities'.

Yogyakarta Principles on the application of international human rights law in relation to sexual orientation and gender identity:

The Yogyakarta Principles, launched in 2007 at a public event at the UN, were adopted by a group of distinguished experts in international law, including academics, judges, UN special rapporteurs, and NGO representatives. Developed in response to patterns of abuse targeting people because of their actual or perceived sexual orientationor gender identity, the Principles address such serious concerns as extrajudicial executions, torture, and other violence, access to justice, privacy, non-discrimination, rights to freedom of expression and assembly, employment, health, education, immigration and refugee issues, public participation, and a range of other rights. Advocates can help disseminate the Principles and urge adoption of the recommendations they contain for the UN agencies, governments, and civil society.

Sexual orientation and gender identity in the UN General Assembly:

On 18 December 2018, just days after the 70th anniversary of the Universal Declaration of Human Rights, a joint Statement on Human Rights, Sexual Orientation and Gender Identity was read in the UN General Assembly. Signed by 66 states, it is the first statement condemning human rights violations based on sexual orientation and gender identity to be presented in the General Assembly. Delivered by the Ambassador of Argentina, this historic statement was coordinated by states from all regional groups: Argentina, Brazil, Croatia, France, Gabon, Japan, the Netherlands, and Norway.

The statement condemns killings, torture, arbitrary arrest, and 'deprivation of economic, social and cultural rights, including the right to health'. The signatories are 'disturbed that violence, harassment, discrimination, exclusion, stigmatization and prejudice are directed against persons in all countries in the world because of sexual orientation or gender identity'. The statement also calls on states to 'promote and protect human rights of all persons, regardless of sexual orientation and gender identity', and to ensure that no criminal penalties are imposed on account of sexual orientation or gender identity.

Refugee Status Relating to Gender, Sexual Orientation, or Gender Identity:

Opportunities to establish refugee status for those fleeing persecution on the basis of their sexual orientation or gender identity may be supported by a valuable new resource issued by the UN High Commissioner for Refugees (UNHCR) in November 2008: an 18-page Guidance Note on Claims for Refugee Status Under the 1951 Convention Relating to Sexual Orientation and Gender Identity[8].

Gender and HIV/AIDS:

Much has been written on the gender-related aspects of HIV/AIDS. Just two issues of recent focus are the under-representation of women in medical trials, and the trend to criminalize HIV transmission and exposure. In addition, because biological differences between men and women can influence drug metabolism, research data should be disaggregated and reported by sex. The Women and HIV Trials initiative begun in 2007 by a coalition of organizations has begun to address the challenge of under-representation and recommend protocols to increase the inclusion of women in these trials.

The trend towards criminalizing HIV transmission and exposure has prompted concern that laws criminalizing exposure and transmission compound women's risk to violence. The Women Won't Wait campaign has stated that 'women's ability to safely

7 Not Waving but Drowning: Gender Mainstreaming and Human Rights in the United Nations. Harvard Human Rights Journal 2005;18(1):1-18

8 Violence against Women, the Obligation of Due Diligence, and the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women – Recent Developments. Human Rights Law Review 2008;8(3):517-533

disclose their status and adhere to treatment is already severely limited by the threat of violence from their intimate partners and/or families'. The threat of prosecution will exacerbate this situation. In addition, because women are often the first to learn of their HIV/AIDS status due to prenatal or postnatal care, they are likely to be disproportionately targeted for prosecution. The trend towards criminalization may affect gay men by serving as a vehicle to prosecute them even in states that do not criminalize same-sex sexual relations per se.

Women as Key to Peace building:

When the UN Security Council adopted by consensus Resolution 1325 (2000) calling for the increased representation of women in conflict resolution and peacemaking processes, and incorporation of a gender perspective in peacekeeping operations and in negotiation and implementation of peace agreements, women took action. The resolution became an advocacy tool, and women on every continent used it to push to be present at peace negotiations and in post-conflict reconstruction planning and implementation (WILPF: Resolution 1325 in Action).

Security Council Resolution 1820 (2008) elaborates on parts of resolution 1325 and addresses sexual violence in conflict and post-conflict zones. A challenge is to ensure that states and the UN do not treat efforts to implement Resolution 1820 as a reason to ignore Resolution 1325. If one is attempting to bring about a peaceful and just resolution of the situation in Afghanistan, for example, one must not meet only with warlords; one should meet with women as well, and not write them out of the consultation and decision-making process[9].

New Information and Communication Technologies:

New information and communication technologies present both challenges and opportunities in addressing gender issues in human rights. New forms and manifestations of violence against women have emerged through such technologies as the internet, webcams, and mobile phone technology. This violence includes cyber stalking, online verbal abuse of women, and email harassment.

The gender digital divide in access to these new technologies, however, remains a continuing challenge. A panel on 'Why the purse feels empty Financing for women's equitable access to information and communication technologies during the 2018 session of the UN Commission on the Status of Women presented perspectives on this issue from donor, development, and civil society groups and a failure to implement basic rights of peoples. In addition, because women are 'the principle care-givers and domestic natural resource managers', they are at particular risk

Gender and Climate Change:

Climate change threatens a wide range of rights, including the right to food, to adequate housing and water, and even the right to life. A United Nations Children's Fund (UNICEF) advisor has pointed out that women and children are disproportionately affected by climate change-related impacts, which are 'a reflection of social inequalities 'because of their direct reliance on the ecosystem for much of their productive and household activities.

Educating for Women and Human Rights:

A key challenge is the need for education of governmental officials, inter-governmental organizations' staff, journalists, and civil society, including human rights NGOs, about issues relating to women's human rights and to sexual orientation and gender identity. Education of educators is also critically important in order to protect the right to education. In its intervention at the United Nations Educational, Scientific and Cultural Organization (UNESCO) International Conference on Education in November 2008, the Global Alliance for Lesbian, Gay, Bisexual and Transgender Education (GALE) highlighted the need for collaboration between ministries of education and LGBTI civil society. Addressing the situation of students 'who are not able to conform to expected male or female gender roles', GALE drew attention to the bullying and ridicule these students often experience, which frequently remains unchallenged by school staff. GALE estimates about six million students a year drop out worldwide as a result of this bullying.

Restrictions on NGO Registration and Activities on gender Biasness:

In many countries, NGOs may operate only with government approval of registration. Denial of registration and revocation of registration are a continuing challenge

9. Adopted by the Security Council at its 5916th meeting, on 19 June 2008 https://www.securitycouncilreport.org

faced by human rights groups, a challenge all the more difficult for those wishing to organize on issues of sexual orientation and gender identity. Even in some states where homosexuality is not a criminal offence, meetings and demonstrations are still banned. The International Gay and Lesbian Human Rights Commission details rallies and marches in Russia, for example, the police arrested over 20 LGBT activists at Moscow's City Hall when they attempted to deliver a complaint there, and the police stood aside as skinheads and others violently attacked the group. The mayor of Moldova's capital, Chisinau, flouted a ruling by the state's Supreme Court when, for the third year in a row, he denied an LGBT group's request to hold a march, even after the Court ruled that the denial violated the state's constitution and the European Convention on Human Rights. Impunity for violence directed at LGBTI marches is also a problem. In Bolivia, for example, when several people in an LGBT march were injured by a Molotov cocktail, the district prosecutor and other officials failed to investigate the incident.

Conclusions:

The idea of human rights advances the notion that the similarities between and amongst human beings are greater than the differences. This implies that there is such a thing as a common humanity, of which each individual male or female is an expression. Such a view treats national, cultural, social and other differences amongst human beings as, at best, secondary considerations.

The process of assessing the implications for women and men of any planned action, including legislation, policies or programmes, in all areas and at all levels. It is a strategy for making women's as well as men's concerns and experiences an integral dimension of the design, implementation, monitoring and evaluation of policies and programmes in all political, economic and societal spheres, so that women and men benefit equally and inequality is not perpetuated. The ultimate goal is gender equality.

Human rights, social justice and gender equality approaches are not only an essential aspect of the 2030 Agenda, but also at the forefront of the Global Evaluation Agenda. Evaluation has a critical role to play in assessing these dimensions and showing what works and why.

In the context of the COVID-19 crisis, there is a potential risk when conducting evaluations of bias against under-represented groups in the selection of respondents as a result of convenience sampling due to travel restrictions and shifting institutional priorities. IES has therefore identified potential measures that can be taken to mitigate these risks. This includes e.g. selecting respondents in an inclusive manner, disaggregating data by individual characteristics and phasing out and adjust data collection planning in order to ensure that under-represented groups will be included.10

Moreover, there is an increase in gender-related recommendations from 2% (2011-2014) to 15% (2017-2018). One example that can be highlighted is the implementation of recommendations from the Sustainable Livelihoods and Development in Myanmar Sub-Programme, resulting in the recruitment of both a national and international gender experts for the Country Programme

Today's critical theories of global politics have engaged with feminist thinking and gender perspectives in a number of different ways. Social constructivism had a significant impact on early radical feminist conceptions of gender, which placed a particular emphasis on the process of socialization that takes place within the family as boys and girls are encouraged to conform to contrasting masculine and feminine stereotypes.

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10. https://www.unodc.org/unodc/en/evaluation/human-rights-and-gender